

If service is made by . . .	Service is complete when . . .
(ii) Mail or delivery service	The document is delivered to the party.
(iii) Electronic means	The document is transmitted to the party, unless the serving party learns that it did not reach the party to be served.
(iv) Publication	The final notice is published under § 4.450-5(b)(3).

(7) In the absence of evidence to the contrary, delivery under paragraph (c)(6)(ii) of this section is deemed to take place 5 business days after the document was sent.

(d) The manager or administrative law judge, as the case may be, may extend the time for filing or serving any document in a contest, other than a notice of appeal under § 4.452-9.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 15117, Aug. 13, 1971; 68 FR 33803, June 5, 2003; 75 FR 64667, Oct. 20, 2010]

§ 4.423 Subpoena power and witness provisions.

The administrative law judge is authorized to issue subpoenas directing the attendance of witnesses at hearings to be held before him or at the taking of depositions to be held before himself or other officers, for the purpose of taking testimony but not for discovery. The issuance of subpoenas, service, attendance fees, and similar matters shall be governed by the Act of January 31, 1903 (43 U.S.C. 102-106), and 28 U.S.C. 1821.

HEARINGS ON APPEALS INVOLVING QUESTIONS OF FACT

§ 4.430 Prehearing conferences.

(a) The administrative law judge may, in his discretion, on his own motion or motion of one of the parties or of the Bureau or Office direct the parties or their representatives to appear at a specified time and place for a prehearing conference to consider: (1) The possibility of obtaining stipulations, admissions of facts and agreements to the introduction of documents, (2) the limitation of the number of expert witnesses, and (3) any other matters which may aid in the disposition of the proceedings.

(b) The administrative law judge shall issue an order which recites the action taken at the conference and the agreements made as to any of the matters considered, and which limits the

issues for hearing to those not disposed of by admissions or agreements. Such order shall control the subsequent course of the proceeding before the administrative law judge unless modified for good cause, by subsequent order.

[36 FR 7186, Apr. 15, 1971, as amended at 75 FR 64668, Oct. 20, 2010]

§ 4.431 Fixing of place and date for hearing; notice.

The administrative law judge shall fix a place and date for the hearing and notify all parties and the Bureau or Office. All hearings held in connection with land selection appeals arising under the Alaska Native Claims Settlement Act, as amended, shall be conducted within the State of Alaska, unless the parties agree otherwise.

[47 FR 26392, June 18, 1982, as amended at 75 FR 64668, Oct. 20, 2010]

§ 4.432 Postponements.

(a) Postponements of hearings will not be allowed upon the request of any party or the Bureau or Office except upon a showing of good cause and proper diligence. A request for a postponement must be served upon all parties to the proceeding and filed in the office of the administrative law judge at least 10 days prior to the date of the hearing. In no case will a request for postponement served or filed less than 10 days in advance of the hearing or made at the hearing be granted unless the party requesting it demonstrates that an extreme emergency occurred which could not have been anticipated and which justifies beyond question the granting of a postponement. In any such emergency, if time does not permit the filing of such request prior to the hearing, it may be made orally at the hearing.

(b) The request for a postponement must state in detail the reasons why a postponement is necessary. If a request is based upon the absence of witnesses, it must state what the substance of the

§ 4.433

testimony of the absent witnesses would be. No postponement will be granted if the adverse party or parties file with the examiner within 5 days after the service of the request a statement admitting that the witnesses on account of whose absence the postponement is desired would, if present, testify as stated in the request. If time does not permit the filing of such statement prior to the hearing, it may be made orally at the hearing.

(c) Only one postponement will be allowed to a party on account of the absence of witnesses unless the party requesting a further postponement shall at the time apply for an order to take the testimony of the alleged absent witness by deposition.

[36 FR 7186, Apr. 15, 1971, as amended at 75 FR 64668, Oct. 20, 2010]

§ 4.433 Authority of the administrative law judge.

(a) The administrative law judge has general authority to conduct the hearing in an orderly and judicial manner, including authority to:

- (1) Administer oaths;
- (2) Call and question witnesses;
- (3) Subpoena witnesses as specified in paragraph (b) of this section;
- (4) Issue findings and decisions as specified in paragraph (c) of this section; and
- (5) Take any other actions that the Board may prescribe in referring the case for hearing.

(b) The administrative law judge has authority to subpoena witnesses and to take and cause depositions to be taken for the purpose of taking testimony but not for discovery. This authority must be exercised in accordance with the Act of January 31, 1903 (32 Stat. 790; 43 U.S.C. 102 through 106).

(c) The administrative law judge has authority to issue any of the following, as specified by the Board under § 4.415(c)(2):

- (1) Proposed findings of fact on the issues presented at the hearing;
- (2) A recommended decision that includes findings of fact and conclusions of law; or
- (3) A decision that will be final for the Department unless a notice of appeal is filed in accordance with § 4.411

43 CFR Subtitle A (10–1–11 Edition)

within 30 days of receipt of the decision.

(d) The issuance of subpoenas, the attendance of witnesses, and the taking of depositions are governed by §§ 4.423 and 4.26.

[75 FR 64668, Oct. 20, 2010]

§ 4.434 Conduct of hearing.

(a) The administrative law judge may seek to obtain stipulations as to material facts.

(b) Unless the administrative law judge directs otherwise:

- (1) The appellant will first present its evidence on the facts at issue; and
- (2) The other parties and the Bureau or Office will then present their evidence on such issues.

[75 FR 64668, Oct. 20, 2010]

§ 4.435 Evidence.

(a) All oral testimony shall be under oath and witnesses shall be subject to cross-examination. The administrative law judge may question any witnesses. Documentary evidence may be received if pertinent to any issue. The administrative law judge will summarily stop examination and exclude testimony which is obviously irrelevant and immaterial.

(b) Objections to evidence will be ruled upon by the administrative law judge. Such rulings will be considered, but need not be separately ruled upon, by the Board in connection with its decision. Where a ruling of an administrative law judge sustains an objection to the admission of evidence, the party affected may insert in the record, as a tender of proof, a summary written statement of the substance of the excluded evidence and the objecting party may then make an offer of proof in rebuttal.

§ 4.436 Reporter's fees.

Reporter's fees shall be borne by the Bureau or Office.

[36 FR 7186, Apr. 15, 1971, as amended at 75 FR 64668, Oct. 20, 2010]

§ 4.437 Copies of transcript.

Each party must pay for any copies of the transcript that the party requests. The Bureau or Office will file